


Doc Code: AP.PRE.REQ



PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 04329.3257-00000	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/790,834	Filed March 3, 2004	
	First Named Inventor Toru Homma		
	Art Unit 2145	Examiner Lin Liu	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 59,269</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature Daniel R. Lupo Typed or printed name (571) 203-2788 Telephone number July 2, 2008 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			

☐ *Total of _____ forms are submitted.

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PATENT
Customer No. 22,852
Attorney Docket No. 04329.3257

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
TORU HOMMA) Group Art Unit: 2145
)
Application No. 10/790,834) Examiner: Lin Liu
)
Filed: March 3, 2004) Confirmation No. 2527
)
For: ELECTRONIC APPARATUS WITH)
COMMUNICATION DEVICE)

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request a pre-appeal brief review of the rejections in the Final Office Action mailed on April 2, 2008. This Request is being filed concurrently with a Notice of Appeal, in accordance with the Official Gazette Notice of July 12, 2005.

Claims 1, 2, 4-8, and 10-14 are pending, at least twice rejected, and are the subject of this Pre-Appeal Brief Request for Review. In the Final Office Action mailed on April 2, 2008, the Examiner rejected claims 1, 4-7, and 10-14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. US 2002/0002035 A1 issued to Sim et al. (hereinafter, "*Sim*") in view of U.S. Patent No. 6,775,305 B1 to Delvaux (hereinafter, "*Delvaux*"). The Examiner also rejected claims 2 and 8 under 35 U.S.C. § 103(a) as being unpatentable over *Sim* in view of *Delvaux*, and further in view of "Official Notice."

The Examiner's rejections contain clear errors and the Examiner's rejections omit the essential elements necessary for determining obviousness under 35 U.S.C. § 103(a). More particularly, the Examiner did not properly evaluate the scope and content of the prior art. *See* *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). *See also* M.P.E.P. § 2141. Additionally, the Examiner did not show a teaching or suggestion of each and every element of Applicants' independent claims 1 and 7.

Sim, taken alone or in combination with *Delvaux*, does not teach or suggest each and every element of independent claims 1 and 7, in particular:

establishing two independent channels between the communication device and the external device, the two independent channels including a first channel transmitting content data from the communication device to the external device, and a second channel transmitting content data from the external device to the communication device (claim 1);

establish two independent channels between the computer and the external device, the two independent channels including a first channel transmitting content data from the computer to the external device and a second channel transmitting content data from the external device to the computer (claim 7).

Indeed, the Examiner does not rely on *Sim* to teach or suggest the above-quoted claim elements, and the Examiner admits that “*Sim* does not explicitly teach a method of establishing two independent channels for transmitting content data communication between the communication device and the external device.” Final Office Action, p. 3. The Examiner instead relies on *Delvaux*, alleging that “*Delvaux* teaches a method of establishing a multi-channel independent asynchronous communication links.” *Id.* The Examiner has incorrectly determined the scope and content of *Delvaux*.

Delvaux also fails to teach or suggest at least the above-quoted elements of claims 1 and 7. Instead, *Delvaux* discloses a “multi-channel communication link 140 applies a sequence number to each individual data packet (e.g., an ATM cell) ... As long as the sequence number is

inserted at a place where the packet flow has not been multiplexed (split), the sequence number may be used on the receiving end of the multi-channel communication link 140 to ensure correct resequencing of a data stream.” *Delvaux*, Col. 16, lines 37-46. In *Delvaux*, “first FIFO buffer 142a may be configured to work together with the first line mux/demux 144a to transfer each available TPDU to an available communication line transmitter 143. ... [T]he stream of TPDUs may be distributed across the various available physical communication lines 146 with TPDUs being transferred at a greater frequency by the first line mux/demux 144a to physical communication lines 146 capable of supporting a higher bit transfer rate.” *Id.* at Col. 16, line 61 to Col. 17, line 8.

Further, *Delvaux* discloses “a first TPDU may be transferred by ... the first FIFO 142a ... to the line 0 transmitter 143₀. ... [T]he line 0 transmitter 143₀ may encode and modulate the TPDU for transmission across line 0 146₀. ... Simultaneously, a second TPDU may be transferred by the first FIFO 142a ... to the line 1 transmitter 143₁ where it may also be encoded and modulated for transmission across line 146₁ for receipt by the line 1 receiver 145₁.” *Id.* at Col. 17, lines 9 to 21.

Thus, *Delvaux* discloses sending packets of data on multiple independent channels by an ATM switch, and does not disclose the that the number of content channels to be established is changed in accordance with a communication mode for use, and two independent channels having different transmission directions are established in the second communication mode. *Delvaux* simply does not teach establishing two independent content channels, one channel in a first direction, the second channel in a second direction, where the number of channels to be established is changed in accordance with a communication mode.

Because the question of obviousness must be resolved on the basis of the *Graham* factual inquiries (M.P.E.P. § 2141), the Examiner did not properly determine the required factual inquiries to reach a legal conclusion of obviousness. Specifically, as discussed above, *Delvaux* does not teach or suggest the claimed “the two independent channels including a first channel transmitting content data from the communication device to the external device, and a second channel transmitting content data from the external device to the communication device” (claim 1). Because *Sim*, taken alone or in combination with *Delvaux*, fails to teach or suggest the above-quoted element of claims 1 and 7, and because the Examiner has not properly determined the scope and content of the cited prior art, the rejection is improper and must be withdrawn.

Additionally, claims 2 and 8 were rejected as being unpatentable over *Sim* in view of *Delvaux*, and further in view of “Official Notice.” Official Notice was taken by the Examiner “that a method of notifying a user of an incoming call on a display by prompting a notify message is well known in that art.” Final Office Action at 7. Official Notice relates to notification of the user of an incoming call, and does not disclose the Applicants’ claimed “the two independent channels including a first channel transmitting content data from the communication device to the external device, and a second channel transmitting content data from the external device to the communication device” (claim 1). Official Notice, like *Delvaux*, simply does not teach or suggest establishing two independent content channels, one channel in a first direction, the second channel in a second direction, where the number of channels to be established is changed in accordance with a communication mode. Without conceding that the Examiner’s Official Notice is correct or proper, the combination of *Sim*, *Delvaux*, and Official Notice, taken alone or in combination, does not teach or suggest each and every element of

Applicant's claimed invention. The rejection of claims 2 and 8 is also improper and must be withdrawn.

For the reasons presented above, the 35 U.S.C. § 103(a) rejections are factually and legally deficient. Because *Sim*, taken alone or in combination with *Delvaux*, or in combination with Official Notice, fails to teach or suggest at least the above-quoted elements of claims 1 and 7, the rejection must be withdrawn and the claims allowed. Independent claims 1 and 7 should therefore be allowable, and dependent claims 2, 4-6, 8, and 10-14 should also be allowable at least by virtue of their respective dependence from allowable base claim 1 or 7.


In view of the foregoing, Applicants request a pre-appeal brief review of the rejections in the Final Office Action mailed on April 2, 2008. Pending claims 1, 2, 4-8, and 10-14 are in condition for allowance, and Applicants request a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 02, 2008

By: 
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